

PUBLIC LAW BOARD NO. 1760

Award No. 85

Case No. 85
File MW-CGO-82-6

Parties Brotherhood of Maintenance of Way Employees
to and
Dispute Norfolk and Western Railway Company

Statement

of Claim: Claim on behalf of Mathew Jones requesting that he be reinstated with all rights and be paid for all time lost due to his dismissal for failure to comply with instructions of Carrier's Medical Director.

Findings: The Board has jurisdiction of this case by reason of the parties Agreement establishing this Board.

Claimant alleged that on November 30, 1987 he suffered an on-duty injury. Although he said he did not need medical attention that day, when reporting to work the following day he requested to see a physician. He was given a complete physical examination including x-ray and urinalysis. The results thereof reflected positive for codeine and cocaine. He was withheld from service pursuant to medical policy.

Claimant had been given a return to service physical examination on June 27, 1986 which reflected positive for marijuana.

Pursuant to Carrier's Medical Director, Dr. Ford, Claimant produced a negative sample within the required 45 days. He was therefor approved for work January 15, 1987 but was advised that he was required to take periodic tests over the next three years and should a further test be positive that Claimant would be subject to dismissal.

The physical examination taken on December 1, 1987 reflected that Claimant had not complied with Dr. Ford's instructions and company policy stated in his letter of January 15, 1987. He was given a formal investigation thereon and as a result thereof, dismissed from service.

The Board finds no basis for procedural objections.

There was sufficient evidence adduced to show that Claimant had failed to comply with Carrier's well articulated medical policy of February 12, 1985 and August 1, 1985 concerning drugs. It was shown that the chain of custody of the sample taken in the instant case was maintained and not broken. The two separate tests employed on the urine sample included a test using the Enzyme Immuno

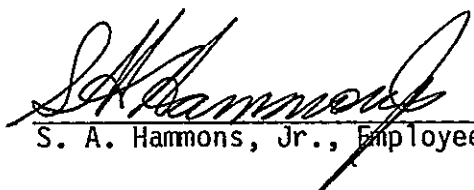
Assay (EMS) technique and the confirmation Gas Chromatography Mass Spectrometry (GC/MS) test. Both tests were positive.


The Brotherhood in its May 1987 edition of the BMWE Journal confirmed the accuracy of the later test as being:


"The most reliable urine test is the GC/MS. By measuring the actual atomic weight of each drug in the specimen, this test eliminates false-positives."

After the showing as to why the tests at issue were reliable, the Board has no proper ground for reversing the discipline imposed. The case cannot be set aside on the assumed grounds that said tests were false-positive. This claim will be denied.

Award: Claim denied.


S. A. Hammons, Jr., Employee Member


L. F. Miller, Carrier Member


Arthur T. Van Wart, Chairman
and Neutral Member

Issued July 27, 1989.